

No.48414-5-II

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COURT OF APPEALS
DIVISION II

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2017 FEB 10 PM 1:07

OF THE STATE OF WASHINGTON

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DIVISION II

Superior Court No. 14-3-02245-9

Jennifer Johnson

Petitioner

v.

Timothy Johnson

Respondent

RESPONDENT'S BRIEF

Jennifer Johnson

2422 S 128th St,

Sea Tac, WA 98168

206-437-1171

pm 2/7/17

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A.The Court did not error in, in making Ms. Johnson the primary

residential parenting, in part, on the finding Mr. Johnson

and Mrs. Johnson co parented during the relationship.

B.The Court did not error in granting sole decision making for education

and health care to the mother in the Final Parenting Plan entered Dec. 4,2015

C. The Court did not error in determining who was responsible for the

Abusive use of Conflict after separation of Mr. and Mrs. Johnson.

D. The Court did not error in finding the pornography was not an issue in this case.

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Table of Authorities

RCW 26.09.184

RCW 26.09.191

RCW 26.09.440

RCW 26.09.004

I. Response to Appellant's Assignment of Error

The trial court did not error in any of its finding. There was adequate evidence and testimony presented by Mr. Johnson and Mrs. Johnson for the court to base their decisions on in regards to primary parent, and decision making. The court did not error in there consideration of the relevance in the pornography brought forth by Mr. Johnson.

II. Issues Presented

- A. If the Court properly decided the *primary residential parent for AVJ with their findings*
- B. Whether the court granted sole decision making to Mrs. Johnson error in the Final Parenting Plan entered December 4, 2015.
- C. If the Court erred in determining who was responsible for the abusive use of conflict after Mr. Johnson and Mrs. Johnson separated
- D. Whether the court erred in their consideration of the relevance of the pornography

III. Statement of Case

There has been a lot of talk about Mr. Maxwell and websites found that had inappropriate material. There had been a lot of talk about concerns that Aubrey may be raised in a sexualized environment (RP. Vol.2, 119:22-25) and that he doesn't recognized boundaries (RP. Vol.2 121:4-6). But during the whole trial there was not one mention if Aubrey had any knowledge of the inappropriate material, or acted in a manor in which she was in a sexualized environment. Another topic is that Ms. Johnson actively engages in Abusive use of conflict. Most conflict reported was self reporting my MR Johnson and that examples of conflict Mr. Johnson and his family were engaging in Abusive use of conflict (RP. Vol. 1, 67:17-72:20). The Court established the permanent parenting according to law (RCW 26.09.184). Sole decision making was awarded to Ms Johnson due to the lack of communication which

was not disputed by either party. Mr. Johnson has a drinking issues and acknowledges he in fact uses marijuana recreationally (RP Vol.2 279:15-19)

IV. Argument

During the four days of trial there was a lot of talk about websites with inappropriate material that Mr. Maxwell, Ms. Johnson's fiancé at the time, may or may not have posted publicly on the internet. There was a lot of speculation that Mr. Maxwell may have issues with boundaries (RP Vol. 2 121:4-6).

There was no hard evidence given other than what could be possibilities. The Guardian ad litem had observed Mr. Maxwell and AVJ's interactions while conducting Ms. Johnson's observation. There was no observation, or evidence, Mr. Maxwell doesn't recognize boundaries (RP Vol.2 140:12-16). This observation was 3.4 hours minus .8 for travel (RP Vol.2 141:1-12:2). There was also the concern, due to the possibility of having issues with boundaries, that Aubrey may be raised in a sexualized environment.

Mr. Maxwell has two children, prior to meeting Ms. Johnson, of which he is their sole parent. These children at the time were 11 and 8 years of age. Mr. Maxwell had put his children into counseling to help them deal with their mother leaving. The children, as well as Mr. Maxwell had been seeing a counselor for about four months prior to trial (RP Vol.2 159:1-15). If Jeromy had issues with boundaries and creating a sexualized environment, Mr. Maxwell's children would show evidence of being raised in sexualized environment for 11 and 8 years. Counselors are mandatory reports and after four months of counseling there are no reports reflecting the concerns made by the Guardian ad litem and Mr. Johnson regarding Mr. Maxwell.

Ms. Johnson was awarded sole decision making due to a lack of communication (RP 15:21-16:2). As the law states if the court finds factors or conduct that adverse to the best interest of the child they

can limit any provisions of the parenting plan (RCW 26.09.191 (3)(G)). How can two people make a decision when they cannot communicate and that cannot agree on any other matter (RP Vol.1 33:8-1)(RP Vol.1 70:16-17). The fact Mr. Johnson and Ms. Johnson cannot agree on anything and have a lack of communication goes undisputed by both parties.

Mr. Johnson states from the very beginning that Ms. Johnson engages in Abusive use of conflict. When the Guardian ad litem was asked about examples where Ms. Johnson engages in abusive use of conflict, the Guardian ad litem stated that she did not state and could not state any(RP Vol.2 71:21-23). On the other hand there were lots of examples where Mr. Johnson and his family engaged in abusive use of conflict. There is the incident of an exchange where *Ms. Johnson asked for Mr. Johnson drivers license and proof of insurance*. Mr. Johnson refused to let Ms. Johnson validate such materials, at which point the Guardian ad litem was called on the phone to assist in the situation by Ms. Johnson. The Guardian ad litem then got on the phone with Mr. Johnson, where Mr. Johnson stated his family and himself did not want Ms. Johnson to know where they lived due to fear of being harassed. The Guardian ad Litem had to tell Mr Johnson that if he didn't provide the materials he wouldn't be able to take AVJ. The Guardian ad Litem then goes on and states that she thinks the father was the "contributing factor" of abusive use of conflict (RP Vol.1 68:6-70:11).

Then there is Mr. Johnson's sister's, Trisha Johnson, version of the incident. Trisha Johnson states she got a call from her brother to come assist him for the exchange. Trisha Johnson stated she knew I had previously asked Tasha Hartley (AVJ's babysitter) and Tory Johnson(Mr. Johnson's brother), for their driver's licenses. Trisha Johnson states that she shows up and was unable to provide her drivers license because she *couldn't find it after digging around in her car*. Trisha goes on to say that after she was able to produce her drivers license and proof of insurance she was able to take AVJ. Trisha Johnson then goes on to say that her temper wasn't the greatest. While she was putting AVJ in her vehicle, Trisha

Johnson makes the statement "AVJ has a calm face" and then turned to Ms. Johnson and says "well your license and insurance" (RP Vol.5 504:10-505:21)

There is a lack of communication between Mr. & Ms. Johnson. Ms. Johnson reported that due to a conversation Mr. Johnson and Ms. Johnson had, Ms. Johnson requested that the parties record all communication due to the fact Mr. Johnson would not acknowledge conversations the parties had or stated the conversations were completely different. At which then communication started only being thru text (RP Vol.3 217:23-218:23). Another example of Mr. Johnson engaging in abusive use of conflict is in his lack of communication as to where he is living. Mr. Johnson lived with his mother and step father in Port Angeles with AVJ after the parties separated. As testified Mr. Johnson moved to Kent, WA.(RP Vol.3 291:18-292:9) (RP Vol.4 338:6-9)(RP Vol.5 484:5-8). Mr. Johnson did not report his move to Kent, WA to the court or to Ms. Johnson (RP Vol.3 217:1-22). Mr. Johnson wasn't sure if he had informed Ms. Johnson of the move either. Mr. Johnson states he didn't inform the court of his move because he didn't know if it was for the long term (RP Vol.5 389:10-16). As per the law, RCW 26.09.440, Mr. Johnson is to required to give Ms.Johnson notice of an intent to relocate the child whether it be long or short term. Also as stated previously in this brief, Mr. Johnson stated Mr. Johnson's family and himself didn't want Ms. Johnson to know where they lived for fear Ms. Johnson would harass them. The fear of being harassed has never been stated except Mr. Johnson didn't want to give Ms. Johnson his drivers license.

Mr. Johnson is making the argument that the court erred in there decision of who should be AVJ's primary residential parent based on the findings that the parties had the ability to co parent. There is multiple testimonies made by Mr. Johnson that during the relationship the parties were able to make decisions together(RP Vol 3 306:21)(RP Vol.3 317 20-318:1)(RP Vol.3 324:23-25). At one point Mr.

Johnson was even asked if Ms. Johnson participated in caring for AVJ, which was not denied (RP Vol.4 3:3). RCW 26.09.004 (2) defines what parenting functions are; aspects of the parent-child relationship in which the parent makes decisions and preforms functions necessary for the care growth of the child. (A) Maintaining a loving, stable, consistent, and nurturing relationship with the child. There is no evidence that either party was unable to do so. (B) Attending to the daily needs of the child, such as feeding, clothing, physical care and grooming, supervision, healthcare, day care, and engaging in other activities which are appropriate to the developmental level of the child and that are within the social and economic circumstances of the particular family. There is no argument that Ms Johnson was the primary financial support of the family. Per Mr. Johnson's own testimony Ms. Johnson was involved with these activities even while going to work. There is an example of things we would do as a family on Ms. Johnson's days off, like hanging out and having game nights (RP Vol. 3 310:13-23). In Mr. Johnson's declaration (pg. 4 20-21) he states he would have AVJ up in the mornings to say goodbye to Ms. Johnson. Mr. Johnson and Jason Holbrook (Mr. Johnson's step father) talk about how Ms. Johnson would take AVJ to bed (RP Vol.3 322:17-25)(RP Vol. 5 486:2-7) .There is no dispute that Ms. Johnson was the sole driver of the family (RP Vol. 3 313:16-17)(RP Vol.3 324:1-2) which means Ms.Johnson would have been the only means for the family to get to the store to buy groceries and cloths for AVJ and transportation to doctor visits. Mr. Johnson in his own testimony states that he was primary but not the sole parent responsible for potty training (RP Vol.4 390:22-391:4). (F) Providing financial support of the child. There is no dispute that neither Mr. Johnson or Ms. Johnson did not work at some point throughout AVJ's life.

Conclusion

There is no reason for the appellate court to change any previous decisions made by the court regarding Johnson VS Johnson case # 14-3-02245-9. The court followed the law and made its decisions accordingly. Throughout the preceding of case # 14-3-02245-9 all the testimony provided by both parties shows that they had a history of co parenting, have problems with communication, Mr. Johnson engages in abusive use of conflict, and that there is no reason to believe Mr. Maxwell is a concern. The court did not error in awarding Ms. Johnson sole decision making regarding health and education. If two parties are unable to communicate or agree the primary parent should be awarded sole decision making. RCW 26.09.191 (3) states if a parent's involvement or conduct may have an adverse effect on the child's best interest, and the court may preclude or limit any provisions of the parenting plan. The existing factor of the inability to communicate or agree would make it very hard for decisions to be made regarding AVJ (RCW 26.09.191 (3)(g)).

Date this 6th day of February 2017



Jennifer Johnson

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Certificate of Service

STATE OF WASHINGTON

On this 23rd day of November 2016 certify that I served the foregoing Respondent's Brief on

Appellant by sending a copy by first class mail to:

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I declare under penalty of perjury of the laws of the State of Washington

that the foregoing is true and correct

A handwritten signature in black ink, consisting of a large, stylized 'P' followed by a series of loops and a long horizontal stroke.

Place: Sea Tac, WA